

## REMARKS/ARGUMENT

Claims 1, 3, 5-7, 10-12, 21-25, 27-30, 31, 32 and 73 are pending. Claim 26 is withdrawn from consideration. Claims 1, 21 and 31 are amended to address informalities.

Claims 1, 3, 5-7, 10-12, 21-25, 27-29, 31, 32 and 73 stand rejected under 35 U.S.C. § 102(e) as anticipated by *Hossainy* (US6764505). Claim 30 stands rejected under 35 U.S.C. § 103(a) in view of *Hossainy* (US6764505) and other art. Applicants traverse.

### Rejection under 35 U.S.C. § 102(e)

As best understood, the Office found that *Hossainy* anticipated independent Claims 1, 6, 21 and 31 in view of the subject matter disclosed in FIGS. 6-9 of this reference. Referring to FIG. 6, *Hossainy* shows a stent length 601 having a variable surface area, and a treatment portion 620. FIG. 7 shows an extension of radioactivity beyond stent ends 750, 760. A uniform field of radioactivity 755 extends along the stent body. Another embodiment is illustrated in FIGS. 8-9. With regards to this embodiment, *Hossainy* notes that embodiments also include tapered deliveries of radioactivity 830 to ensure avoidance of sub-threshold delivery 21 in vessel areas of concern. Claim 1, however, includes the following feature,

an elongated source of a therapeutic agent, the source having an amount or a concentration of the therapeutic agent that gradually decreases along a length of the elongated source from a location inward of a proximal end or at the proximal end of the elongated source, or from a location inward of a distal end or at the distal end of the elongated source.

*Hossainy* does not disclose “a concentration of the therapeutic agent that gradually decreases along a length of . . . “. One of ordinary skill would have understood that a “therapeutic agent that gradually decreases” has less sudden changes inward or at ends of the elongated source. *See, e.g.*, paragraphs [0006], [0008] - [0010], [0027] and [0028] of U.S. Pub. No. 2002/0183581. Withdrawal of the rejection under 35 U.S.C. § 102(e) is requested for this reason.

Claim 6 recites “wherein the radioactive region includes a segment gradually transitioning from the therapeutic level to a non-therapeutic level . . .”, Claim 21 recites “the radioactivity gradient gradually decreasing the dose delivered to the vessel from a therapeutic level to a non-therapeutic level of radioactivity” and Claim 31 recites “the drug concentration

gradient gradually decreasing from a therapeutic dose level to a non-therapeutic dose level". For reasons similar to those given for Claim 1, *Hossainy* also does not anticipate Claims 6, 21 or 31.

Withdrawal of the rejection of Claims 1, 6, 21 and 31 under 35 U.S.C. § 102 is requested. Allowance of Claims 1, 6, 21 and 31 is requested.

Claims 3, 5, 7, 10-12, 22-25 and 27-29, 32, and 73, which depend from allowable Claims 1, 6, 21, and 31, respectively, are also not anticipated by *Hossainy* because they depend from allowable claims. Withdrawal of the rejection of Claims 3, 5, 7, 10-12, 22-25 and 27-29, 32, and 73 under 35 U.S.C. § 102 is requested. Allowance of Claims 3, 5, 7, 10-12, 22-25 and 27-29, 32, and 73 is requested.

Claim 26 stands withdrawn from consideration per the restriction requirement. However, this claim now depends from allowable Claim 21. Removal of the restriction to, and allowance of Claim 26 is requested in view of the allowability of Claim 21.

Rejection under 35 U.S.C. § 103(a)

Claim 30 stands rejected under 35 USC § 103(a) over *Hossainy* in combination with other art of record. Applicants traverse this rejection because *Hossainy* does not qualify as prior art under Section 103(a). *Hossainy* would only fall under 103(a) prior-art as applied through only §§ 102(e), 102(f) and/or 102(f) because the earliest publication date of *Hossainy* is after the earliest filing date of the present application. Moreover, the present application and *Hossainy* were, at the time the invention of the present application was made, owned by Advanced Cardiovascular Systems, Inc., now Abbott Cardiovascular Systems, Inc. *Hossainy* is therefore disqualified as prior-art under 35 U.S.C. § 103(c). Accordingly, since *Hossainy* is not prior art 35 U.S.C. § 103(a), the rejections of the claims under this section is improper. Applicants kindly ask that the rejections under Section 103 be withdrawn and Claim 30 allowed.

### CONCLUSION

In light of the foregoing claim amendments and remarks, this application is considered to be in condition for allowance, and early passage of this case to issue is respectfully requested. If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 07-1850.

Respectfully submitted,

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